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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT TACOMA

12 DAVID MURRAY,

13 Plaintiff,

14 v.

15 MICHAEL J. ASTRUE, Commissioner of the  
16 Social Security Administration,

16 Defendant.

CASE NO. 10-cv-05517 JRC

ORDER ON MOTION FOR  
ATTORNEY'S FEES PURSUANT TO  
42 U.S.C. § 406(b)

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18 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local  
19 Magistrate Judges' Rule MJR 13. (See also Notice of Initial Assignment to a U.S. Magistrate  
20 Judge and Consent Form, ECF No. 3; Consent to Proceed Before a United States Magistrate  
21 Judge, ECF No. 7). This matter is before this Court on plaintiff's Motion for an Award of  
22 Attorney's Fees Pursuant to 42 U.S.C. § 406(b) (ECF No. 21). Defendant has filed a response  
23 (ECF No. 23).  
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25 After considering and reviewing the record, the Court concludes that the \$14,400.00 fee  
26 sought by plaintiff's attorney is reasonable.

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On January 11, 2011, the Court granted plaintiff's Agreed Motion for Attorney Fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("the EAJA") (see Order, ECF No. 20). Pursuant to this Order, plaintiff received EAJA attorney's fees in the amount of \$5,655.68 (see id.).

Plaintiff has filed a Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) (ECF No. 21). Plaintiff requests attorney's fees in the amount of \$14,400.00 to be awarded to his attorney (id.). This amount is based on 32 hours of attorney time (see Attorney Declaration, p. 1; see also id., Attachment 3, p. 1).

ORDER - 2

## STANDARD OF REVIEW

Whenever a court renders a judgment favorable to a claimant under this title [42 U.S.C. §§ 401 et. seq.] who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.

42 U.S.C. § 406(b). According to the United States Supreme Court, “the attorney for the successful claimant must show that the fee sought is reasonable for the services rendered.” Gisbrecht v. Barnhart, 535 U.S. 789, 807 (2002). The Court also concluded that Section 406(b) “calls for court review of such [contingent-fee] arrangements as an independent check, to assure that they yield reasonable results in particular cases.” Id. The Court may reduce the amount of attorney’s fees “based on the character of the representation and the results the representative achieved.” Id. at 808 (citations omitted); see also Elick v. Barnhart, 445 F.Supp. 2d 1166, 1168 (C.D. Cal 2006). For example, “[i]f the attorney is responsible for delay” or “the benefits are large in comparison to the amount of time counsel spent on the case,” the Court may adjust the attorney’s fees downward. Gisbrecht, supra, 535 U.S. at 808 (*citing* Rodriquez v. Bowen, 865 F.2d 739, 746-47 (1989)).

## DISCUSSION

Plaintiff’s attorney requests attorney’s fees in the amount of \$14,400 (see Motion, ECF No. 21, p. 1). Plaintiff’s attorney indicates that the EAJA attorney’s fee award of \$5,655.68 will be refunded to plaintiff, representing the total of the smaller fee, pursuant to 28 U.S.C. § 2412, Pub. L. No. 99-80, § 3, 99 Stat. 183, 186 (1985) (see id.). See also Kopulos v. Barnhart, 318 F.Supp.2d 657, 668 (2004). The amount requested is based on 32 hours of attorney time (see Attorney Declaration, p. 1; see also id., Attachment 3, p. 1). Defendant does not object to plaintiff’s request (see Response, ECF No. 23, p. 1).

1 Plaintiff's attorney secured a favorable result for plaintiff. In addition, the Court has not  
2 found any evidence to suggest that counsel caused any undue delay. While, on its face, the award  
3 reflects a higher than average hourly rate, because of the potential contingent nature of the  
4 recovery, the Court also recognizes the delay in payment, the risk of recovering no fees, and the  
5 benefit to the client of an attorney's willingness to accept a case on a contingent basis. These are  
6 all relevant considerations when reviewing an application such as this one.  
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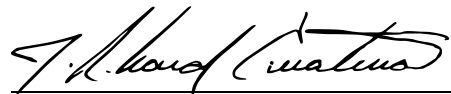
8 CONCLUSION

9 The Court concludes that the fee sought is reasonable for the services rendered. See  
10 Gisbrecht, supra, 535 U.S. at 807. The requested fee of \$14,400.00 is appropriate.

11 Accordingly, the Court hereby **ORDERS** that counsel for plaintiff, Anne Kysar, Esq., of  
12 Schroeter, Goldmark & Bender, is awarded attorney's fees pursuant to 42 U.S.C. § 406(b) in the  
13 amount of \$14,400.00, minus any processing fees allowed by statute.  
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15 It is further **ORDERED** that plaintiff's attorney shall refund the amounts received  
16 pursuant to the EAJA of \$5,655.68 to plaintiff, representing the total of the smaller fee pursuant  
17 to 28 U.S.C. § 2412, Pub. L. No. 99-80, § 3, 99 Stat. 183, 186 (1985).

18 Dated this 13th day of December, 2011.  
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21 J. Richard Creatura  
22 United States Magistrate Judge  
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